

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	
)	
CSX TRANSPORTATION, INC.)	
)	
Defendant.)	

CONSENT DECREE

WHEREAS, Plaintiff, the District of Columbia, on behalf of the District Department of the Environment (collectively, the "District"), has filed a Complaint in this action against Defendant, CSX Transportation, Inc. ("CSXT"), alleging that CSXT's discharges of one or more pollutants, including coal, into the Anacostia River constituted one or more unpermitted discharges of pollutants into the waters of the District, in violation of the District's Water Pollution Control Act, D.C. Official Code §§ 8-103.01, *et seq.*, § 8-103.02;

WHEREAS, the Complaint alleges that these violations occurred on November 9, 2007 when eight (8) railcars owned and operated by CSXT derailed, resulting in the discharge of one or more pollutants into the Anacostia River in the District;

WHEREAS, following the November 9, 2007 derailment, CSXT responded to the incident expeditiously and cooperated fully with the District and other governmental authorities in undertaking comprehensive, costly and effective response actions, and such conduct and cooperation by CSXT is viewed favorably by the District in the exercise of its enforcement discretion;

WHEREAS, through the combined collective and cooperative efforts of the District, CSXT, The National Oceanic and Atmospheric Administration ("NOAA"), the U.S. Fish and Wildlife Service ("FWS"), the National Park Service ("NPS"), and the U.S. Army Corps of Engineers (the "Corps"), the potential for adverse impact to the Anacostia

River was substantially mitigated by both immediate response activities and subsequent cleanup, investigation, monitoring and assessment; and

WHEREAS, CSXT denies any liability to the District and does not, by entering into this Consent Decree, admit liability pursuant to the statute or referenced in this Consent Decree or admit to the allegations alleged in the Complaint;

WHEREAS, this Consent Decree constitutes a settlement of disputed claims, and the District and CSXT (the "Parties"), without the necessity of trial or adjudication of any issues of fact or law, consent to the entry of this Consent Decree; and

WHEREAS, the Parties agree, and this Court finds, that settlement of this matter is in the public interest, and that the entry of this Consent Decree ("Consent Decree") without further litigation is the most appropriate means of resolving this matter pursuant to the terms hereof.

NOW, THEREFORE, without any adjudication of any issue of fact or law and upon consent and agreement of the Parties to this Consent Decree, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. **Parties Bound and Notification.** The Parties agree that the provisions of this Consent Decree shall apply to and be binding upon the District and CSXT.

2. In the event that CSXT, at any time prior to termination of this Consent Decree pursuant to Paragraph 20 ("Termination"), sells, transfers, or assigns any interest in its business that is expressly subject to this Consent Decree (*i.e.*, the bridge crossing the Anacostia River that is owned by CSXT, adjacent to Anacostia Park), CSXT shall advise the purchaser(s), transferee(s), or assignee(s) prior to such transaction, in writing, of the existence of this Consent Decree and simultaneously provide them a copy of the Consent Decree. Thirty (30) days prior to the completion of the transaction, CSXT shall provide, in writing, to the District's Legal Representative, at the address provided in Paragraph 24 ("Notice"), the expected date of the transaction and the name(s) and address(es) of such purchaser(s), transferee(s) or assignee(s). No change in ownership, corporate or partnership status, or transfer of assets by or relating to CSXT will in any way alter its obligations under this Consent Decree.

3. **Jurisdiction.** This Court has jurisdiction over the subject matter alleged in the Complaint pursuant to D.C. Official Code §§ 8-103.16(e), 8-103.18(b), and 11-921, and

other applicable law, and personal jurisdiction over the Defendant pursuant to D.C. Official Code § 13-423. Solely for purposes of this Consent Decree and the underlying Complaint, including any further action to enforce the terms of this Consent Decree, CSXT waives any and all objections and defenses it might have as to jurisdiction and, without admitting or denying the factual allegations contained in the Complaint, fully consents to the terms of this Consent Decree, and to its entry, and enforcement of this Consent Decree by this Court.

4. CSXT hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint or in this Consent Decree. CSXT, after consultation with counsel of its choice, voluntarily consents to the entry of this Consent Decree and agrees and consents to all the terms hereof.

5. **Terms of Settlement.** Considering the nature of the discharge giving rise to violations of the Act, and the factors set forth in the Act, including CSXT's efforts to mitigate the effects of the discharge, the Parties have agreed that an appropriate civil penalty for the alleged violations of the Act as set forth in the Complaint is fifty thousand dollars (\$50,000.00) ("Civil Penalty").

6. In addition to the foregoing Civil Penalty, the Parties have agreed that CSXT will reimburse the District sixty thousand five hundred and sixty one dollars and seventy nine cents (\$60,561.79) for the response costs which it incurred as a result of the derailment.

7. The Parties have also agreed that CSXT will contribute fifty thousand dollars (\$50,000.00) towards performance of a project or projects to restore natural resources potentially damaged by CSXT's alleged acts or omissions, as set forth in the Complaint, ("Natural Resources Restoration Project(s)").

8. The Parties have also agreed that CSXT will contribute five hundred thousand dollars (\$500,000.00) towards performance of a Supplemental Environmental Project or Projects ("SEP(s)") to benefit the Anacostia River ecosystem.

9. In order to satisfy the requirements of paragraphs 5 and 6, above, not more than thirty (30) days after execution of an Order by the Court entering this Consent Decree, CSXT shall (unless directed to do otherwise by the District, in writing) submit a check, payable to the order of the District of Columbia Special Purpose Revenue Fund 0665 (Adjudication Hearings, Water Quality). CSXT's check shall bear the case name and

docket number. A copy thereof shall be sent to the District as set forth in Paragraph 24, below. Should full payment not be made in a timely manner, as required herein, CSXT shall also pay stipulated penalties, as set forth in Paragraph 13, herein.

10. In order to satisfy the requirements of paragraphs 7 and 8, above, not more than thirty (30) days after execution of an Order by the Court entering this Consent Decree, CSXT shall (unless in its sole discretion the District directs it to do otherwise, in writing) submit a check, payable to the order of "D.C. Treasurer" in the amount of five-hundred and fifty thousand dollars (\$550,000.00). CSXT's check shall bear the case name and docket number. A copy thereof shall be sent to the District as set forth in Paragraph 24. The District in its sole discretion will submit the funds for the SEP to the National Fish & Wildlife Foundation ("Foundation"). The Foundation is a charitable, non-profit, tax-exempt corporation established by the National Fish and Wildlife Foundation Act, 16 U.S.C. §§ 3701, *et seq.*, which is authorized to accept funds from any legal source to undertake activities that further the conservation of fish, wildlife and plant resources for present and future generations. The Foundation will create and manage an account, to be known as the "Anacostia River Endowment Fund," into which it shall deposit the amount received hereunder, as well as other potential contributions from other sources, and shall disburse the Fund's contents as directed by the District to fund environmental projects and initiatives designed to protect, preserve, and restore the environment and ecosystems in the Anacostia River, including wetlands, stream banks, riparian buffers and watersheds associated therewith. The Parties agree and, in entering this Consent Decree, this Court decrees, that CSXT shall have no responsibility, obligation or liability whatsoever with respect to the Anacostia River Endowment Fund or any projects administered or implemented by the District or any other party with monies partly or wholly provided by the Fund, other than CSXT's funding obligations as specified herein.

11. The Civil Penalty specified in Paragraph 5, above, shall represent a civil penalty assessed by the District, and shall not be deductible for purposes of Federal, state, or local taxes.

12. CSXT certifies that it has not received, and will not in the future seek to receive, credit in any other enforcement action under any federal, state or local law or regulation for the SEPs or the Natural Resources Restoration Projects to be funded by

CSXT's contributions as specified herein; nor is CSXT required to perform or develop or pay for such SEPs or Natural Resources Restoration Projects by any other agreement, grant or as injunctive relief.

13. Stipulated Penalties

a. In the event that CSXT fails to comply with any of the terms or provisions of this Consent Decree, CSXT shall be liable for stipulated penalties in the following amounts for each day of violation, until such violation is cured or ceases: \$1,500 for each day up to and including the seventh day of such failure; \$2,500 for each additional day of such failure up to and including the fourteenth day thereof, and \$5,000 for each day thereafter.

b. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity or until the violation is otherwise fully cured or ceases, whichever is later.

c. CSXT shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by the District for such penalties. Method of payment shall be by check or money order, payable to the D.C. Treasurer, to the attention of the District Department of the Environment.

14. Public statements must acknowledge enforcement action. Any public statement, oral or written, in print, film, or other media, made by CSXT making reference to any of the SEPs or Natural Resources Restoration Projects shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the District Department of Environment for alleged violations under D.C. Official Code § 8-103.02."

15. No relief from compliance; no endorsement by the District. This Consent Decree shall not relieve CSXT of its obligation to comply with all applicable provisions of federal, state or local law; nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, approval or other requirement. Additionally, nothing in this Consent Decree shall be construed as prohibiting, altering or in any way limiting the ability of the District or the District to require CSXT to conduct any sampling or monitoring at or about the site of incident at issue in the Complaint. The District's ability to seek any such sampling is explicitly preserved and reserved. The Parties agree and this Court decrees that the stipulated penalty provisions set forth in

Paragraph 13 hereof shall not apply with respect to the foregoing matters.

16. Plaintiff's reservation of rights and covenant not to sue. Plaintiff covenants not to sue nor to take any other form of administrative or judicial enforcement against CSXT and its successors, as well as its officers, directors and employees, with respect to any of the acts, omissions or other matters alleged in or encompassed by the Complaint, including any and all acts or omissions relating to the November 9, 2007 derailment that occurred (or failed to occur) through the date of lodging of this Consent Decree. The Complaint alleges that CSXT's discharges of one or more pollutants, including coal, into the Anacostia River as a result of the November 9, 2007 incident constituted one or more unpermitted discharges of pollutants into the waters of the District, in violation of the District's Water Pollution Control Act, D.C. Official Code §§ 8-103.01, *et seq.*, § 8-103.02. Plaintiff's covenant not to sue shall take effect upon the date of entry of this Consent Decree. If CSXT breaches and fails reasonably timely to cure any breach of this Consent Decree, the foregoing release and covenant shall be deemed null and void. Further, nothing in this Consent Decree is intended to nor shall be construed to operate in any way to limit or otherwise preclude the District from taking additional civil enforcement action with regard to CSXT or any other person who has violated or violates hereinafter District of Columbia laws, regulations, or other legal requirements, by reason of acts or omissions other than those encompassed by the first sentence of this paragraph.

17. The District reserves any and all legal and equitable remedies, sanctions, and penalties which may be available to it to enforce the provisions of this Consent Decree against CSXT for failure to comply with the requirements of this Consent Decree.

18. Modification. There shall be no material modification of this Consent Decree without the prior written approval of the parties to this Consent Decree and the approval of the Court. All non-material modifications, such as a change to the person receiving notice under this Consent Decree, may be made by written agreement of the Parties.

19. Public notice. The undersigned parties acknowledge and agree that the final approval by the District and entry of this Consent Decree are subject to public comment. CSXT agrees to entry of this Consent Decree without further notice and shall not challenge entry, provided this Consent Decree is not modified by the District in response to any public comment or for any other reason without the written consent of CSXT.

20. **Termination.** This Consent Decree shall terminate only after a determination by the District and the Court that CSXT has made the payments set forth in Paragraphs 5 – 8, as well as any outstanding stipulated penalties, if any. If CSXT has met the requirements of this Consent Decree, it will file a motion with the Court seeking termination, for which motion concurrence shall not be unreasonably withheld by the District.

21. **Retention of jurisdiction.** Until termination of this Consent Decree, this Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder, as may be necessary or appropriate for the construction, execution, or implementation of this Consent Decree.

22. **Final judgment.** Upon approval and entry of this Consent Decree by the Court, the Consent Decree shall constitute a final judgment pursuant to D.C. SCR-Civil Rule 54.

23. **Signatories.** The undersigned representatives of CSXT certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind CSXT. The District certifies that signature of the Consent Decree by all of its undersigned representatives constitutes full authorization to enter into the terms and conditions of this Consent Decree, to execute the Consent Decree on behalf of the District, and after public comment and entry by the Court, to legally bind the District.

24. **Notice.** Written communications submitted under this Consent Decree shall be addressed as follows, unless the listed individuals or their successors give written notice of change(s) to the parties:

District of Columbia

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Washington, DC 20004-1206

25. **Service.** For purposes of this action, CSXT hereby agrees to accept service by mail, and to waive the formal service requirements of D.C. SCR-Civil Rule 4, including but not limited to, service of a summons.

APPROVED AND SO ORDERED:

Judge of the Superior Court

Date

For Plaintiff:

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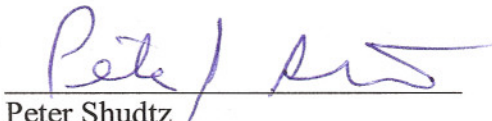


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Attorneys for the District of Columbia

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